

### **REMARKS**

This Application has been carefully reviewed in light of the Office Action mailed September 28, 2004. Claims 1-50 are pending in the Application. The Examiner rejected Claims 1-50. Applicants have amended Claims 1, 21, and 46. Applicants submit that no new matter has been added with these amendments. As described below, Applicants believe all claims to be allowable over the cited references. Therefore, Applicants respectfully request reconsideration and full allowance of all pending claims.

#### **Section 112 Rejections**

The Examiner rejected Claims 21 and 22 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Claims 21 and 22 recite “caller labeling information,” which is a new feature first recited in these Claims. Because Claims 21 and 22 are the first recitation of this new feature, Applicants respectfully submit that the term “caller labeling information” does not lack antecedent basis. According to the M.P.E.P., “[i]f the scope of a claim would be reasonably ascertainable by those skilled in the art, then the claim is not indefinite.” M.P.E.P. § 2173.05(e) (citing *Ex parte* Porter, 25 U.S.P.Q.2d 144, 1145 (Bd. Pat. App. & Inter. 1992)). In this case, Applicants submit that an identifier such as “a” or “an”, if added, would render the claim grammatically incorrect. Specifically, were the claim amended to recite “displaying the caller identification and a caller labeling information,” the claim would not make grammatical sense. Thus, Applicants have not preceded “caller labeling information” in either claim with an identifier, such as “a” or “an.” If the Examiner continues to reject Claims 21 and 22 under § 112, second paragraph, however, Applicants invite the Examiner to suggest alternative claim language in accordance with M.P.E.P. § 2173.05(e).

#### **Section 102 Rejections**

The Examiner rejected Claims 1-4, 7, 9-11, and 25 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,828,666 issued to Focsaneanu et al. (“*Focsaneanu*”). For the following reasons, Applicants respectfully request reconsideration and allowance Claims 1-4, 7, 9-11, 25, 27-29, 33, 35-37, and 49.

Independent Claim 1 of the present application recites:

A method for providing integrated voice, video, and data content in an integrated service offering to one or more customer premises, comprising:

- receiving television programming from a programming source;
- converting the television programming to a common format for communication over a single network infrastructure using a common communication protocol;
- receiving data from a data network in the common format of the common communication protocol for communication over the single network infrastructure;
- receiving telephone communications from a telephone network;
- converting the telephone communications to a common format for communication over the single network infrastructure using the common communication protocol; and
- communicating the converted television programming, data, and converted telephone communications in the common format over the single network infrastructure using the common communication protocol to one or more customer premises to provide the integrated service offering.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); MPEP § 2131. In addition, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claims" and "[t]he elements must be arranged as required by the claim." *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990); MPEP § 2131 (*emphasis added*). Whether considered alone or in combination with any other cited references, *Focsaneanu* does not disclose, either expressly or inherently, each and every element of the Claim 1

As examples, *Focsaneanu* does not disclose, teach, or suggest at least the following elements of Claim 1:

- converting the television programming to a common format for communication over a single network infrastructure using a common communication protocol

- receiving data from a data network in the common format of the common communication protocol for communication over the single network infrastructure
- converting the telephone communications to the common format for communication over the single network infrastructure using the common communication protocol

The claim language clearly indicates that the data is received in a common format of a common communication protocol and that the received television programming and telephone communications are converted to the common format of the common communication protocol to provide integrated services. Applicants submit that the recited elements are absent from the disclosure of *Focsaneanu*, which merely discloses an access module that interfaces with a variety of data networks to deliver/receive data services traffic. (Column 10, lines 62-64). As described in Applicants' previous Response to Office Action mailed on June 10, 2004, the access module extracts information content from traffic for services, determines the appropriate routing according to the extracted information content, and routes the extracted information content to appropriate service providers and/or network resources. (Column 4, lines 46-53). Thus, the access module operates to determine the appropriate routing of information based at least in part upon the information content. As a result, the access module merely operates as an interface for the mediation of services on a service by service basis and is limited to a system for extracting a sample of data traffic to determine the type of traffic being transmitted and routing the traffic appropriately. (Column 10, lines 57-60).

*Focsaneanu* provides descriptions of the capabilities of a CPE connector. For example, with regard to FIGURE 8, *Focsaneanu* describes a CPE connector 230 that "includes a simple modem 232 for handling computer or fax signals." (Column 7, lines 46-47). "Voice signals from a telephone set and modem signals are sent over the local access [210]." (Column 7, lines 48-49). When the "identifying circuit detects and identifies a service request as a POTS service or data service request[,] . . . [a] processor 246 performs a selection and enablement of either POTS service or data services in response to the identifying circuit." (Column 7, lines 65-67 and Column 8, lines 6-8). The access module can alter the state of the access at any instant that a service request is received. (Column 9, lines 44-46). For example, when a customer requests POTS service, the data connection is

dropped. (Column 10, lines 6-8). Although *Focsaneanu* discloses that “[u]pon identification of the type of service requested, the controller performs address conversion, protocol conversion, rerouting, etc., and exchanges packetized data formed at PAD 254 (packet assembly/disassembly) with the data network in accordance with information stored in the database” (Column 8, lines 14-19), *Focsaneanu* does not provide any details regarding the address conversion or the protocol conversion that is performed to determine the appropriate routing of information. Certainly, *Focsaneanu* cannot be said to disclose, teach, or suggest “receiving data from a data network in [a] common format of [a] common communication protocol” and “converting the television programming to [the] common format for communication over a single network infrastructure using [the] common communication protocol,” as recited in Applicants’ Claim 1. For similar reasons, *Focsaneanu* also cannot be said to disclose, teach, or suggest “converting the telephone communications to the common format for communication over the single network infrastructure using the common communication protocol,” as also recited in Applicants’ Claim 1.

For at least these reasons, Applicants respectfully request reconsideration and allowance of Claims 1, together with Claims 2-26 that depend from Claim 1.

### **Section 103 Rejections**

The Examiner rejected Claims 27-30, 33, 35-37, and 49 under 35 U.S.C. § 103(a) as being unpatentable over *Focsaneanu*. Applicants respectfully traverse these rejections for the reasons stated below.

Independent Claim 27 recites features and operations that are similar, though not identical, to those discussed above with regard to Claim 1. For example, Claim 27 recites the following elements:

- a video encoder operable to convert the television programming into a common format for communication over a single network infrastructure using a common communication protocol
- a gateway operable to convert the telephone communications into the common format for communication over the single network infrastructure using the common communication protocol

- a router . . . operable to . . . communicate the converted television programming, the converted telephone communications, and the data in the common format over the single network infrastructure using the common communication protocol

Again, the claim language recites that the data is received in a common format of a common communication protocol and that the received television programming and telephone communications are converted to the common format of the common communication protocol to provide integrated services. Accordingly, for reasons similar to those discussed above with regard to Claim 1, Applicants respectfully submit that *Focsaneanu* does not disclose, teach, or suggest the combination of elements recited in Applicants' Claim 27.

For at least these reasons, Applicants respectfully request reconsideration and allowance of Claim 27, together with Claims 26-50 that depend on Claim 27.

The Examiner rejected Claims 5-6, 8, 12-20, 23-24, 26, 31-32, 34, 38-48, and 50 under 35 U.S.C. § 103(a) as being unpatentable over various combinations of *Focsaneanu*, U.S. Patent No. 5,805,154 issued to Brown ("*Brown*"), U.S. Patent No. 5,761,294 issued to Shaffer et al. ("*Shaffer*"), U.S. Patent No. 5,748,736 issued to Mittra ("*Mittra*"), U.S. Patent No. 6,510,152 issued to Gerszberg et al. ("*Gerszberg*"), U.S. Patent No. 6,215,483 B1 issued to Zigmond ("*Zigmond*"), U.S. Patent No. 5,550,900 issued to Ensor et al. ("*Ensor*"), and U.S. Patent No. 6,314,094 B1 issued to Boys ("*Boys*").

Dependent Claims 5-6, 8, 12-20, 23-24, and 26 depend upon independent Claim 1. Dependent Claims 31-32, 34, 38-48, and 50 depend upon independent Claim 27. Accordingly, Claims 5-6, 8, 12-20, 23-24, 26, 31-32, 34, 38-48, and 50 incorporate the limitations of their respective independent claims and are allowable for at least this reason. Furthermore, Claims 5-6, 8, 12-20, 23-24, 26, 31-32, 34, 38-48, and 50 recite additional features and operations that are not disclosed, taught, or suggested by the references cited by the Examiner.

As just two examples, Claims 13 and 39 each recite that "the single network infrastructure comprises an Ethernet network." In the Office Action, the Examiner

acknowledges that *Focsaneanu* lacks these features but relies on *Gerszberg* for disclosure of an Ethernet network. (Office Action, page 16). The portion of *Gerszberg* relied upon by the Examiner, however, merely states that “customer premises telephone and/or data connections contain splitters for separating analog voice calls from other data services such as Ethernet transported over digital subscriber line (DSL) modems.” (Column 1, lines 26-29). Because *Gerszberg* further states that “voice band data and voice signals are sent through a communications switch in a central or local office to an interexchange carrier or Internet service provider” and that “DSL data is sent through a digital subscriber loop asynchronous mode (DSLAM) switch which may include a router,” *Gerszberg* indicates that two separate network infrastructures are used to transport analog voice calls and data services. Furthermore, *Gerszberg* does not disclose that the Ethernet, as an integrated network infrastructure, is able to communicate “converted television programming,” as is recited in Applicants’ claims. Accordingly, Applicants respectfully submit that the *Focsaneanu-Gerszberg* combination does not disclose, teach, or suggest the combination of features and operations recited in Applicants’ Claims 13 and 39.

For at least these reasons, Applicants respectfully request reconsideration and allowance of Claims 5-6, 8, 12-20, 23-24, 26, 31-32, 34, 38-48, and 50.

The Examiner rejected Claim 21 and 46 under 35 U.S.C. § 103(a) as being unpatentable over *Focsaneanu* as applied to Claim 1 above, and further in view of U.S. Patent No. 6,028,917 issued to Creamer et al. (“*Creamer*”) and *Zigmond*. Applicants respectfully traverse these rejections for the reasons stated below.

Claims 21 and 46 have been amended to incorporate the limitations of Claims 1 and 27, respectively, such that Claims 21 and 46 are now in independent form. Applicants respectfully submit that Claims 21 and 46 are allowable since the proposed *Focsaneanu-Creamer-Zigmond* combination does not disclose, teach, or suggest each and every element of Applicants’ Claims 21 and 46.

For example, now independent Claim 21 recites the following elements:

- converting the television programming to a common format for communication over a single network infrastructure using a common communication protocol
- receiving data from a data network in the common format of the common communication protocol for communication over the single network infrastructure
- converting the telephone communications to the common format for communication over the single network infrastructure using the common communication protocol

Independent Claim 46 contains certain similar limitations. In the Office Action, the Examiner relied specifically upon *Focsaneanu* for disclosure of the recited features. Accordingly, for reasons similar to those discussed above with regard to Claim 1, Applicants respectfully submit that the *Focsaneanu-Creamer-Zigmond* does not disclose, teach, or suggest the combination of elements recited in Applicants' independent Claims 21 and 46.

As a further example, independent Claim 21 recites "displaying the caller identification and caller labeling information in combination with the television programming at the customer premises." Claim 46 recites "a network appliance operable to display the caller identification information in combination with the television programming at the customer premises." In the Office Action, the Examiner specifically relies on *Creamer* for the disclosure of "caller identification and caller labeling information" and relies on *Zigmond* for disclosure of "television programming." (Office Action, page 28). Applicants respectfully submit, however, that the references relied by the Examiner do not disclose the combinations of elements recited in Applicants' independent Claims 21 and 46. Whereas *Creamer* discloses "extended caller ID" that is "displayable directly at a computer linked to the web," *Zigmond* discloses a client that "allows Web content and television programming to be concurrently displayed." (*Creamer*, Column 10, lines 39-41; *Zigmond*, Column 6, lines 11-13). Thus, *Creamer* is limited to a system combining a caller ID with a computer, and *Zigmond* is limited to a system combining web content and television. Neither reference discloses, however, "displaying caller identification and caller labeling information in combination with the television programming," as recited in Claim 21, or "a network appliance operable to display the caller identification information in combination with the

television programming at the customer premises,” as recited in Claim 46. The combination of elements is absent from the disclosures of both *Creamer* and *Zigmond*.

Moreover, assuming for the purposes of argument that the *Focsaneanu-Creamer-Zigmond* combination discloses the features and operations of Claims 21 and 46 (which Applicants dispute above), the rejection of Claims 21 and 46 is improper at least because the Examiner has not shown a suggestion or motivation in the references or in the knowledge generally available to one of ordinary skill in the art to modify *Focsaneanu* to include the caller ID of *Creamer* with the television programming of *Zigmond*, which is required by the M.P.E.P. “The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art suggests the desirability of the combination.” M.P.E.P. § 2143.01. With regard to the rejection of Claim 21, the Examiner speculates “it would have been obvious” to make the proposed combination “for the purpose of identifying who is calling before answering the telephone” so that the user may “choose whether or not to answer a call.” (Office Action, page 28). However, the Examiner presents no evidence that suggests the proposed *Focsaneanu-Creamer-Zigmond* combination. Applicants respectfully submit that the “motivation” provided by the Examiner is not evidence of why one of ordinary skill in the art at the time of the invention would have been motivated to make the proposed combination. Without such independent suggestion, the art is to be considered as merely inviting unguided and speculative experimentation which is not the standard with which obviousness is determined. *Agmen Inc. v. Chugai Pharmaceutical Co., Ltd.*, 927 F.2d 1200, 18 U.S.P.Q.2d 1016 (Fed. Cir. 1991).

For at least these reasons, Applicants respectfully request reconsideration and allowance of Claims 21 and 46.

The Examiner rejected Claim 22 under 35 U.S.C. § 103(a) as being unpatentable over *Focsaneanu* as applied to Claim 1 above, and further in view of *Creamer* and *Boys*. Applicants respectfully traverse these rejections for the reasons stated below.

Dependent Claim 22 depends upon independent Claim 1. Accordingly, Claim 22 incorporates the limitations of their respective independent claims and are allowable for at



least this reason. Furthermore, Claims Claim 22 recites additional features and operations that are not disclosed, taught, or suggested by the proposed *Focsaneanu-Creamer-Boys* combination. For example, Claim 22 recites that “displaying the caller identification and caller labeling information in combination with radio programming at the customer premises.” In the Office Action, the Examiner specifically relies on *Creamer* for the disclosure of “caller identification and caller labeling information” and on *Boys* for disclosure of “radio programming.” (Office Action, page 29). Applicants respectfully submit, however, that the references relied by the Examiner do not disclose the combination of elements recited in Applicants’ Claim 22. Whereas *Creamer* discloses “extended caller ID” that is “displayable directly at a computer linked to the web,” *Boys* discloses an “Internet-capable radio . . . for rendering audio data packets received over the Internet as analog audio output.” (*Creamer*, Column 10, lines 39-41; *Boys*, Column 2, lines 48-54). Thus, *Creamer* is limited to a system combining a caller ID with a computer, and *Boys* is limited to a system combining radio with the Internet. Neither reference discloses, however, “displaying caller identification and caller labeling information in combination with radio programming,” as recited in Claim 22. The combination of elements is absent from the disclosures of both *Creamer* and *Boys*.

Moreover, assuming for the purposes of argument that the *Focsaneanu-Creamer-Boys* combination discloses the features and operations of Claim 22 (which Applicant disputes above), the rejection of Claim 22 is improper at least because the Examiner has not shown a suggestion or motivation in the references or in the knowledge generally available to one of ordinary skill in the art to modify *Focsaneanu* to include the caller ID of *Creamer* with the radio programming of *Boys*, which is required by the M.P.E.P. “The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art suggests the desirability of the combination.” M.P.E.P. § 2143.01. With regard to the rejection of Claim 22, the Examiner speculates “it would have been obvious” to make the proposed combination “for the purpose of identifying who is calling before answering the telephone” so that the user may “choose whether or not to answer a call.” (Office Action, page 28). However, the Examiner presents no evidence that suggests the proposed *Focsaneanu-Creamer-Boys* combination. Applicants respectfully submit that the “motivation” provided by the Examiner is not evidence of why one of ordinary skill in the art

would have been motivated to make the proposed combination. Without such independent suggestion, the art is to be considered as merely inviting unguided and speculative experimentation which is not the standard with which obviousness is determined. *Agmen Inc. v. Chugai Pharmaceutical Co., Ltd.*, 927 F.2d 1200, 18 U.S.P.Q.2d 1016 (Fed. Cir. 1991).

For at least these reasons, Applicants respectfully request reconsideration and allowance of Claim 22.

**CONCLUSION**

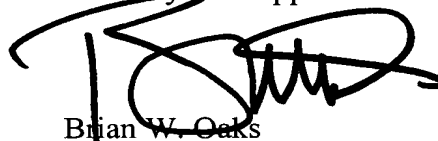
For at least the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending claims.

If the Examiner believes that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to call Brian W. Oaks, Attorney for Applicants, at the Examiner's convenience at (214) 953-6986.

Applicants believe no fees are due. However, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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